

Writ Petition No. 407 of 2003(S/B)

Mahendra Kumar

..... Petitioner

Vs.

State of Uttaranchal and others

..... Respondents

Hon. P.C. Verma, A.C.J.

Hon. Irshad Hussain, J.

Heard Sri. L.P.Naithani, Senior Advocate, learned counsel for the petitioner and learned C.S.C.

This writ petition has been filed seeking a writ of certiorari to quash the order dated 22.07.2003 by which the petitioner has been attached from Pithoragarh to Nainital. The ground of challenge is that the petitioner has been attached to Nainital on the basis of the complaint made against the committed constituted for transfer of teachers of which the petitioner was a number.

Sri L.P. Naithani, Senior Advocate, learned counsel for the petitioner submitted that the decision was a collective one and the petitioner can not be blamed. he further submitted that the Government has cancelled all the transfer orders in respect of district Pithoragarh. He submitted that the order impugned is also based on political considerations. much stress was laid by Sri L.P. Naithani, Senior Advocate on para 4 of the judgment reported in AIR 1988 SC 78 – P. K. Chinnasamy Vs. Government of Tamil Nadu and others, which is reproduced as under:

"If an officer does not behave as required of him under the law he is certainly liable to be punished in accordance with law but it would ordinarily not be appropriate to continue an officer against a post and provide no work to him and yet pay him out of the Consolidated Fund."

From the perusal of the aforesaid para of the judgment, it is clear that a Government servant, if does not behave as required by him under law, he is certainly liable to be punished. It is settled law that the transfer is not a punishment. The Apex court in the case of State of U.P. and another Vs. Sheshmani Tripathi (Civil Appeal No. 1856 of 1992) has held that even the transfer can be made by way of punishment and no opportunity is required to be given in a matter of transfer as it is

exigency of service and it may be required in certain circumstances to transfer a particular employee rather to punish him.

In the instant case, the petitioner has been transferred from Pithoragarh and attached to district Nainital, admittedly according to the petitioner, on the administrative ground which can not be said to be an unfair exercise of power. In our view, impugned order does not suffer from any illegality or infirmity. thus we are not inclined to interfere in the matter of transfer in exercise of our jurisdiction under Article 226 of the Constitution of India. However, it is open for the Government to give some work to the petitioner at Nainital or anywhere where his services are required.

The petition is dismissed accordingly.

1.08.2003

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(Hon. P.C. Verma, A.C.J.) (Hon. Irshad Hussain, J.)